

ALASKA STATE LEGISLATURE
SENATE JUDICIARY STANDING COMMITTEE

March 29, 2008

9:05 a.m.

MEMBERS PRESENT

Senator Hollis French, Chair
Senator Charlie Huggins, Vice Chair
Senator Lesil McGuire
Senator Bill Wielechowski
Senator Gene Therriault

MEMBERS ABSENT

All members present

COMMITTEE CALENDAR

HOUSE BILL NO. 65

"An Act relating to breaches of security involving personal information, credit report and credit score security freezes, consumer credit monitoring, credit accuracy, protection of social security numbers, care of records, disposal of records, identity theft, furnishing consumer credit header information, credit cards, and debit cards, and to the jurisdiction of the office of administrative hearings; amending Rule 60, Alaska Rules of Civil Procedure; and providing for an effective date."

HEARD AND HELD

PREVIOUS COMMITTEE ACTION

BILL: HB 65

SHORT TITLE: PERSONAL INFORMATION & CONSUMER CREDIT

SPONSOR(S): REPRESENTATIVE(S) COGHILL, GARA

01/16/07	(H)	PREFILE RELEASED 1/5/07
01/16/07	(H)	READ THE FIRST TIME - REFERRALS
01/16/07	(H)	L&C, JUD, FIN
01/31/07	(H)	L&C AT 3:00 PM CAPITOL 17
01/31/07	(H)	<Bill Hearing Canceled>
03/28/07	(H)	L&C AT 3:00 PM CAPITOL 17
03/28/07	(H)	Heard & Held
03/28/07	(H)	MINUTE(L&C)
04/04/07	(H)	L&C AT 3:00 PM CAPITOL 17
04/04/07	(H)	<Bill Hearing Canceled>
04/16/07	(H)	L&C AT 10:00 AM CAPITOL 17

04/16/07 (H) Scheduled But Not Heard
04/20/07 (H) L&C AT 3:00 PM CAPITOL 17
04/20/07 (H) Heard & Held
04/20/07 (H) MINUTE(L&C)
04/23/07 (H) L&C AT 3:00 PM CAPITOL 17
04/23/07 (H) Moved CSHB 65(L&C) Out of Committee
04/23/07 (H) MINUTE(L&C)
04/24/07 (H) L&C RPT CS(L&C) 2DP 3NR 1AM
04/24/07 (H) DP: GATTO, NEUMAN
04/24/07 (H) NR: BUCH, LEDOUX, OLSON
04/24/07 (H) AM: GARDNER
05/02/07 (H) JUD AT 1:00 PM CAPITOL 120
05/02/07 (H) Heard & Held
05/02/07 (H) MINUTE(JUD)
05/05/07 (H) JUD AT 8:00 AM CAPITOL 120
05/05/07 (H) Moved CSHB 65(JUD) Out of Committee
05/05/07 (H) MINUTE(JUD)
05/07/07 (H) JUD RPT CS(JUD) NT 4DP 2AM
05/07/07 (H) DP: HOLMES, LYNN, COGHILL, RAMRAS
05/07/07 (H) AM: DAHLSTROM, SAMUELS
01/23/08 (H) FIN AT 1:30 PM HOUSE FINANCE 519
01/23/08 (H) Heard & Held
01/23/08 (H) MINUTE(FIN)
02/13/08 (H) FIN AT 1:30 PM HOUSE FINANCE 519
02/13/08 (H) Heard & Held
02/13/08 (H) MINUTE(FIN)
02/18/08 (H) FIN AT 1:30 PM HOUSE FINANCE 519
02/18/08 (H) Heard & Held
02/18/08 (H) MINUTE(FIN)
02/19/08 (H) FIN AT 1:30 PM HOUSE FINANCE 519
02/19/08 (H) Moved CSHB 65(FIN) Out of Committee
02/19/08 (H) MINUTE(FIN)
02/21/08 (H) FIN RPT CS(FIN) NT 4DP 5NR
02/21/08 (H) DP: HAWKER, CRAWFORD, GARA, NELSON
02/21/08 (H) NR: KELLY, THOMAS, STOLTZE, MEYER,
CHENAULT
02/27/08 (H) TRANSMITTED TO (S)
02/27/08 (H) VERSION: CSHB 65(FIN)
02/29/08 (S) READ THE FIRST TIME - REFERRALS
02/29/08 (S) L&C, JUD, FIN
03/04/08 (S) L&C AT 1:30 PM BELTZ 211
03/04/08 (S) Heard & Held
03/04/08 (S) MINUTE(L&C)
03/13/08 (S) L&C AT 1:30 PM BELTZ 211
03/13/08 (S) Scheduled But Not Heard
03/15/08 (S) L&C AT 4:00 PM BELTZ 211
03/15/08 (S) Heard & Held

03/15/08	(S)	MINUTE(L&C)
03/18/08	(S)	L&C AT 1:30 PM BELTZ 211
03/18/08	(S)	Moved CSHB 65(L&C) Out of Committee
03/18/08	(S)	MINUTE(L&C)
03/19/08	(S)	L&C RPT SCS 4DP SAME TITLE
03/19/08	(S)	DP: ELLIS, BUNDE, DAVIS, STEVENS
03/29/08	(S)	JUD AT 9:00 AM BUTROVICH 205

WITNESS REGISTER

REPRESENTATIVE COGHILL
 Alaska State Capitol
 Juneau, AK

POSITION STATEMENT: Sponsor of HB 65.

ED SNIFFEN, Senior Assistant Attorney General
 Department of Law
 Anchorage, AK

POSITION STATEMENT: Provided information related to HB 65.

MURRAY JOHNSTON, Director
 State & Government Affairs
 Experian

POSITION STATEMENT: Testified on HB 65.

GAIL HILLEBRAND, Attorney at Law
 Consumers Union West Coast Office
 San Francisco, CA

POSITION STATEMENT: Testified on HB 65.

AUDREY ROBINSON, Manager
 State Government Affairs
 Reed Elsevier/LexisNexis

POSITION STATEMENT: Stated opposition to the current draft of HB 65 [SCS CSHB 65(L&C)] but not the concept.

JON BURTON, Vice President
 State Government Relations
 ChoicePoint Inc.

POSITION STATEMENT: Testified on HB 65.

KENTON BRINE, Northwest Regional Manager
 Property Casualty Insurers Association of America (PCI)

POSITION STATEMENT: Testified on HB 65.

KAREN LIDSTER, Staff
 to Representative John Coghill

Alaska State Capitol
Juneau, AK

POSITION STATEMENT: Responded to questions related to HB 65.

JENNIFER FLYNN, Director
Government Affairs
Consumer Data Industry Association (CDIA)
POSITION STATEMENT: Testified on HB 65.

MARIE DARLIN, Coordinator
AARP-Alaska
Juneau, AK
POSITION STATEMENT: Stated support for HB 65.

ACTION NARRATIVE

CHAIR HOLLIS FRENCH called the Senate Judiciary Standing Committee meeting to order at [9:05:21 AM](#). Senators Wielechowski, Huggins, and French were present at the call to order. Senators Therriault and McGuire arrived soon thereafter.

HB 65-PERSONAL INFORMATION & CONSUMER CREDIT

[9:05:26 AM](#)

CHAIR FRENCH announced the consideration of HB 65.

REPRESENTATIVE JOHN COGHILL said he is sponsoring HB 65 for the consumer protection elements it provides. People need protection from having their personal information used against themselves, but at the same time there's need for commerce. People need to work with industry to borrow for houses and cars and to get credit, but their information must be secure. This bill works with a range of individuals, including the consumer, on how to protect valuable personal information from being used for illegal commerce purposes. It sets out a framework to work with the federal laws that have been enacted for consumer protection. HB 65 is a new section of law and has seven articles.

[9:08:04 AM](#)

REPRESENTATIVE COGHILL relayed that the first deals with what constitutes a breach of security involving personal information. It describes the breach, notification of the breach, and the personal information. Next is the credit report and credit score freeze. It describes how a person who feels their information has been compromised is able to freeze their credit and stop bad actors. A somewhat ticklish area involves insurance companies that want to look at credit scoring during a credit freeze. That

is something he has resisted, he said. The next article addresses the protection of social security numbers since they have become a person's de facto pin number. He doesn't think they were intended to be use that way, but that's the way it is. This provision is as stringent as any law in the U.S., but it's workable. Several issues on the topic will probably come up today, he said.

[9:09:41 AM](#)

Senator McGuire and Senator Therriault joined the meeting.

REPRESENTATIVE COGHILL explained that Article 5 deals with factual declarations of innocence after identity theft. Generally a person is considered innocent until proven guilty, but in identity theft situations a person is considered guilty until he or she can prove innocence. That's an unusual circumstance. Describing it as a step in the right direction, he suggested the committee give this provision particular attention.

Article 6 relates to truncation of credit card information. It asks that just the last four numbers on a credit card be used in any transaction. Hand written and manual machine receipts are excepted. He said that might be a concern for those who have a point of sale issue, but he thinks HB 65 covers that. Article 7 has general provisions dealing with definitions and gives a title to the bill. He asked the Chair how he wanted to proceed.

CHAIR FRENCH said his view is that large portions of the bill have been agreed upon, and he would like to concentrate on the areas that are controversial.

REPRESENTATIVE COGHILL acknowledged that the notification issues and dealing with the social security number will be contentious.

[9:12:37 AM](#)

CHAIR FRENCH said he will let people testify and zero in on portions of the bill as concerns arise.

SENATOR THERRIAULT noted that page 2, subsection (c), in the disclosure of breach section, talks about "after an appropriate investigation or after consultation with relevant agencies." His concern is with the "or" on line 19. There's a choice and it seems like any company would always choose to do a self investigation to determine if there's been a breach. He isn't sure why an information collector would ever consult a state or federal entity. He has a number of questions on the way that

section works. The issue was also brought up in an email former Senator Guess sent to committee members. "That's an area that I'd like to have quite a bit of discussion on," he said.

9:14:52 AM

REPRESENTATIVE COGHILL said that relates to Article 1 Breach of Security Involving Personal Information. The state resident has been notified of the breach so they're able to assess the risk of harm. The intention was [for the covered person] to do an initial disclosure or consult with the federal government. "I would expect that that's...a two-tiered approach." There might be no harm at all; it might be that a disc [containing personal information] was temporarily misplaced. Or if there was a breach, they [the covered person] would consult with the relevant federal offices. In either case the covered person would have to document what was done in that risk evaluation and keep a record of that for five years. He believes that time limit was a way of self protecting to making sure that if there was harm done, that somebody would be able to go back. He conceded that the "or" could be problematic if, in the more egregious instances, only self evaluations were done. But, he reminded the committee, these people have a reputation to maintain and a clientele they're responsible to, so this may not become a big problem. He deferred to committee discussion and the industry regarding the practical application. He conceded there is the legal question that if they only have to do one or the other, they may always pick the easiest one..

9:16:53 AM

CHAIR FRENCH referred to page 2, line 21, and asked if "harm" means that the information has fallen into the hands of an identity thief.

REPRESENTATIVE COGHILL said he doesn't know.

CHAIR FRENCH said the converse question would ask what the impact would be on the industry if it had to consult with a state, federal or local agency responsible for law enforcement, even if it meant nothing more than some sort of formal communication.

9:17:50 AM

REPRESENTATIVE COGHILL deferred to Mr. Sniffen.

ED SNIFFEN, Senior Assistant Attorney General, Department of Law, Anchorage, said he understands Senator Therriault's concern. It does make some sense for the state to require a

business to self-police and to consult with the relevant agency in determining whether or not disclosure is required. He doesn't think this necessarily requires disclosure, but it requires the business to inform the local authorities, document the incident and the decision to not disclose and keep the record for five years. If a problem comes up it would be addressed at that time. That's appropriate, he said.

[9:19:15 AM](#)

SENATOR THERRIAULT observed that if that isn't done, the language allows preservation of the status quo. If his company misplaces a disc [containing personal information] for a couple of days, he makes the determination about whether to tell anybody, whether the loss has the potential of harming somebody, and whether to go to consumer protection. As far as having a reputation to protect, it can go either way. He would want to be in contact with law enforcement to make sure the information doesn't get out or he'd keep it quiet and hope that no one is harmed. As far as being in touch with a law enforcement agency, he questions the wording. He'd asked Mr. Sniffen if he has given any thought to what the consultation might entail and the potential liability it might bring to the Department of Law (DOL).

[9:21:36 AM](#)

CHAIR FRENCH commented that DOL becomes the umpire of breaches and the requirement to disclose.

MR. SNIFFEN responded that DOL has a lot of immunity and he expects it would find a way to tell a business that it is ultimately their call. He agreed to give it further thought.

CHAIR FRENCH asked if the same fear of being in error wouldn't drive the covered person to make the disclosure. If a company conducts an internal investigation and decides a breach is unlikely and doesn't disclose, it appears that they're on the hook for up to \$50,000 if they guessed wrong.

[9:23:00 AM](#)

CHAIR FRENCH asked Mr. Sniffen his view of the total damages under this section, for a breach of security that is not disclosed.

MR. SNIFFEN said that if he were a business he would always consult with the local law enforcement agency about a decision not to disclose. If there was harm to a consumer, regardless of whether there was disclosure or not, the exposure would be to

the company holding the data and it would be for the actual economic harm to the consumer plus penalties up to \$50,000. Just because the state or law enforcement agency was consulted doesn't necessarily mean it would be liable, the liability would still be on the company that had the data that was disclosed.

CHAIR FRENCH clarified that the damages are actual economic harm plus up to \$50,000. Mr. Sniffen agreed.

[9:25:16 AM](#)

REPRESENTATIVE COGHILL said he believes that part of what industry will want to discuss is the circumstance of a breach in a database containing 50,000 names where it's known that three names have been picked out and misused. Industry wants to notify just those three rather than all 50,000.

[9:26:14 AM](#)

CHAIR FRENCH questioned why industry shouldn't report all breaches. A parallel can be drawn with the oil industry that is required to report all oil spills regardless of size. Reporting a teaspoon of oil spilled into the harbor may seem a waste of time and paper, but it makes the rules absolutely clear.

REPRESENTATIVE COGHILL said that in the breach category the final responsibility is given to those who own the license, so that may very well be the case.

SENATOR MCGUIRE asked the sponsor if he has looked at her radio frequency identification (RFID) bill, and if it is his intent that reporting requirements in HB 65 would include consumer information that's contained in RFID databases.

[9:28:04 AM](#)

REPRESENTATIVE COGHILL replied he doesn't know for sure, but if it deals with social security numbers or credit information then he believes the answer is yes.

SENATOR MCGUIRE asked him to answer that definitively at the next hearing so that it's clear within the construct of HB 65.

CHAIR FRENCH opened public testimony. In the interest of time management, he asked the testifiers to zero in on areas of the bill that need fixing.

[9:28:30 AM](#)

MURRAY JOHNSTON, Director, State & Government Affairs, Experian, said he will focus on the social security number provision of HB

65. The text recognizes there are legitimate purposes for using social security numbers under the Gramm-Leach-Bliley Act (GLBA) and the Fair Credit Reporting Act (FCRA) to enable commerce and public safety, but the bill also has a categorical and clear prohibition on the collection and disclosure of social security numbers. The exceptions need to be very clear to a judge in a court when it's being enforced by a private right of action or a class action lawsuit. If the exceptions aren't clear, Experian will take steps to make sure it complies with the law. It won't sell products that include social security numbers of Alaska consumers. "When we have suggested language regarding social security numbers, we need...the exceptions to be clear enough that we are confident that the court would agree that we have a legitimate use," he said.

[9:31:36 AM](#)

SENATOR MCGUIRE asked if Experian might stop offering product lines in Alaska if the bill isn't changed and there is a wholesale prohibition on the use of social security numbers in this state.

MR. JOHNSTON said that removing social security numbers from products that are used in Alaska would be a way his company could comply. But removing those numbers might make the products not useful for companies in Alaska. For example, Fanny Mae and Freddie Mac treat credit reports that don't have a social security number attached differently and it would take weeks to get a loan approved instead of hours. Banks also have strict requirements for the products they receipt and authentication products use social security numbers to make sure you have the right person. Without the social security number, those products aren't very useful.

[9:33:21 AM](#)

CHAIR FRENCH asked which exception language threatens Experian's ability to put a social security number on a credit report.

MR. JOHNSTON directed attention to page 18, lines 13-15, and said that the exception "for a purpose authorized by the Gramm-Leach-Bliley Act" is workable, but "to a person regulated by Gramm-Leach-Bliley" is an additional and confusing condition because under Title 5 of that Act, there are explicit permissible uses for non-public personal information. For Experian that would include social security numbers. The Gramm-Leach-Bliley Act also has a definition of financial institutions, and those requirements under Title 5 of GLBA apply to any use of that information. When giving GLBA regulated

information to someone, the protections stay with the information. But not everyone would consider themselves to be a financial institution so that addition requirement that they be regulated by GLBA in addition to a person regulated by GLBA is too restrictive.

[9:35:35 AM](#)

CHAIR FRENCH asked if Experian is regulated by the Gramm-Leach-Bliley Act.

MR. JOHNSTON replied his company is, but his customers are not.

CHAIR FRENCH asked if a customer of his might be a mortgage company.

MR. JOHNSTON replied it could also be a landlord, an employer, or a retailer that is trying to do commerce.

CHAIR FRENCH asked if his concern is that by releasing the information to Ford Motor Company credit department, for example, that Experian is crossing the line into an area that isn't regulated by that Act.

[9:36:35 AM](#)

MR. JOHNSTON clarified that it will always be under the Gramm-Leach-Bliley Act regardless of whether the entity itself is regulated by GLBA. When Experian releases GLBA information to an entity, part of the contract is that the information will continue to be used for the same purposes for which it was received.

CHAIR FRENCH questioned how Experian or a similar company would get in trouble for releasing his social security number in the ordinary course of doing business.

MR. JOHNSTON explained that it's because the people he previously described are not a financial institution under GLBA. Therefore, the exception which seems to indicate that Experian has legitimate uses under GLBA are permissible, but often it can't be used. Whether someone is a financial institution under GLBA is a separate question.

[9:38:01 AM](#)

CHAIR FRENCH questioned Experian's concern with the language in the bill; Experian is regulated by GLBA, and releasing a social security number in conjunction with a credit report is a purpose authorized by GLBA.

MR. JOHNSTON said we know the purpose of GLBA, but the question is what is regulated by GLBA. On the one hand they would be regulated under the requirements of the contract to continue to honor GLBA. But the entity may not be a financial institution. That's why Experian asked that the language be clear so that it can continue to do business in Alaska.

[9:39:06 AM](#)

SENATOR MCGUIRE recapped that in GLBA, there are purposes that are authorized and there is some consideration about how the information is transferred between those regulated as financial institutions and what the authorized uses are. Experian is a regulated entity that is now releasing information for an authorized purpose. She asked what purpose isn't under GLBA that Experian wants to engage in here in Alaska.

MR. JOHNSTON replied all of Experian's uses are regulated under GLBA or FCRA.

SENATOR MCGUIRE said she doesn't see the problem.

MR. JOHNSTON said the issue is that a lot of his customers are not financial institutions as defined by GLBA.

[9:40:35 AM](#)

SENATOR MCGUIRE referred to the phrase "for a purpose authorized" and assumed that Experian is a financial institution under GLBA. A purpose you're authorized to engage in is to provide credit reports to entities that may not be regulated by GLBA. "I don't know what those purposes are but I would assume they're broad purposes that you're authorized to engage in," she said.

MR. JOHNSTON said that for Experian the permitted purposes under GLBA are typically related to credit reporting, authentication, and detection and prevention of fraud.

SENATOR MCGUIRE asked him to send an example of a purpose that he'd like to be included that is relevant to the Alaska consumer because subsection (3) has to be read as a whole. You're a financial institution that's regulated by GLBA and as long as you're using it for authorized purposes, I don't see the rub, she said.

[9:43:02 AM](#)

MR. JOHNSTON said the rub is that the customers of Experian are not regulated by GLBA. "Our products are under GLBA or FCRA. That being the case, then the issue comes that when we sell a product to someone that includes a social [security number], for a purpose under GLBA, they may not be a financial institution and that's why this additional requirement-that they be a financial institution or that they have to be regulated by GLBA-is too restrictive."

CHAIR FRENCH asked Ms. Hillebrand to comment.

GAIL HILLEBRAND, Attorney at Law, West Coast Office, Consumers Union (CU), said CU has been working on these statutes across the country for three years and in her view the issue of the sale of a background or credit report that includes a social security number is a red herring. Page 19, lines 5-8, is an exception to the do not sell section, and it very clearly says that if the social security number is being included as part of the credit report, then it is not a sale. This bill is trying to restrict the sale of social security numbers for revenue, it isn't trying to restrict its use as part of a credit report.

[9:45:36 AM](#)

CHAIR FRENCH clarified that she's referring to the section that deals with the sale, lease, loan, trade or rental of social security numbers. That's essentially Experian's business; it reports on someone's credit to lenders.

MS. HILLEBRAND agreed adding that the exception says that that conduct is not the sale of a social security number. There's a matching exception in the disclosure section that says it's not a disclosure.

CHAIR FRENCH asked why it's not necessary to have the same exception in Sec. 45.48.410 - Request and Collection.

MS. HILLEBRAND explained that the language can't be the same because the person who collects the information isn't issuing the report. There is an exception in the collections section for a purpose authorized by the Fair Credit Reporting Act on page 18, lines 16-17. That applies to people who are collecting the social security number for the purpose of ordering a credit report.

CHAIR FRENCH said they've collected the information, but it hasn't been transferred.

MS. HILLEBRAND agreed; Sec. 45.48.410 relates to collections and there are parallel exceptions under disclosures. Under Section .410 on page 18, lines 18-21, the information may be collected for a background check and certain other purposes. The parallel exception in Section .420 says it is not a sale when Experian reports it, and the parallel exception on page 20, lines 5-8, says it's not a prohibited disclosure when it's part of that report. "So in each section there is an exception so that they can be used for these kinds of reports."

[9:47:39 AM](#)

SENATOR WIELECHOWSKI referred to page 19, lines 18-20, and asked if there's a penalty associated with the disclosure of social security numbers.

MS. HILLEBRAND directed attention to Sec. 45.48.480 - Penalties on page 21, line 22. There's a civil penalty of \$3,000 for a knowing violation plus actual economic damages.

[9:48:38 AM](#)

CHAIR FRENCH expressed satisfaction on that point. He asked if she had general comments on the bill.

MS. HILLEBRAND said CU supports the bill; it strikes a fair and workable balance. The complexity of the exceptions indicates they've been well thought through. We urge you to resist further changes, particularly further exceptions related to social security numbers, she said. Although there have been requests for conformity in the exceptions in the three aforementioned sections, the policy issues are different. We also believe it would not be appropriate to have a more general exception referencing to federal law with respect to people that the federal law doesn't regulate. Under the current drafting the bill avoids that error, she said.

[9:49:46 AM](#)

SENATOR THERRIAULT referred to Sec. 45.48.410 - Request and Collection on pages 18-19, and observed that the exceptions in paragraph (5) exempt nearly everyone but the next door neighbor. He asked if this is similar to most other jurisdictions.

MS. HILLEBRAND said that other states haven't looked at this comprehensively so Alaska will be ahead of the rest of the country almost no matter what it does in the area of restrictions on request and collection, disclosures, and sale of social security numbers. Only four states have begun to move on

the area of request and collection and Alaska will be the first state to move into the area of sale.

9:51:27 AM

CHAIR FRENCH asked if she's saying that if Alaska prevents anyone from asking for his social security number it would be ahead of the rest of the world in having adopted that idea.

MS. HILLEBRAND said yes, but you don't necessarily want to stop there. These exceptions are a fair balance but could be a little narrower, she said. Certain ones such as employment and tax related purposes, which are under governmental, are absolutely essential. She believes that the others respond to business concerns that were presented to the sponsor. "I would defer to him on those," she said.

SENATOR THERRIAULT said that as an example there is an individual's employment or including employment benefits but on page 18, line 2, it says "if the person is expressly authorized by local, state, or federal law" and he thinks that would already be covered by "or federal law." If I'm employing somebody I have to get their social security number, so it seems to be covered up above, he said. He asked if it opens a bigger loophole by restating it in paragraph (5).

MS. HILLEBRAND said the analysis is correct, but sometimes particular industries will use this when it wants something more specific in the statute.

9:53:00 AM

AUDREY ROBINSON, Manager, State Government Affair, Reed Elsevier, parent company for LexisNexis, said that LexisNexis is a provider of public records information that is used in detecting and preventing identity theft and fraud, locating suspects, and investigating criminal and terrorist activities. LexisNexis supports the concept of HB 65, but not the current draft. The social security number provisions in Article 3 are particularly troublesome. Without appropriate exemptions for legitimate business uses, services that LexisNexis provides will be greatly diminished or stop altogether. Those include contracting with employers to do background screening, assisting financial institutions in verifying that customers are not on the known terror watch lists in compliance with the Patriot Act, and providing public records information on liens and judgments to credit bureaus for use on credit reports. Many Alaskans rely on the services that LexisNexis provides for quick information

for consideration on employment, bank accounts, and credit, all of which will be diminished if HB 65 passes in its current form.

MS. ROBINSON highlighted LexisNexis as a concrete example of the issue that Mr. Johnston from Experian spoke to; it is not a person regulated by GLBA. The uses for their information are regulated, so the FTC has jurisdiction for prosecutorial action in the event of misuse. That's the focus point; the goal is to avoid misuse and provide serious repercussions if there is misuse. That doesn't change. Under the current language the purposes for which LexisNexis would use the information don't matter because they aren't regulated by GLBA. But a bank that is trying to comply with the Patriot Act is affected. It is regulated by GLBA and its purposes are authorized by GLBA. When opening an account for a new customer, the Patriot Act requires the bank to verify that the person is not on the known terrorist watch list. The bank doesn't maintain that information, LexisNexis does. The bank contracts with LexisNexis to run the verification. The bank can collect the information from the customer, but would not be able to give the information to LexisNexis for verification and LexisNexis would not be able to return the information to the bank under the current draft.

[9:57:36 AM](#)

CHAIR FRENCH referred to the language on page 18, line 2, and asked why some federal contract wouldn't make LexisNexis the designated person to keep track of who is on the terrorist watch list.

MS. ROBINSON said no. She described the phrase "expressly authorized" as problematic because there isn't a federal law that expressly authorizes anything regarding social security numbers. FCRA and GLBA are negative statutes that disallow use of the information except for certain limited circumstances.

[9:58:44 AM](#)

CHAIR FRENCH questioned why subsection (b)(2)(B) on page 2, wouldn't provide LexisNexis the needed leeway to do its business.

MS. ROBINSON said their attorneys don't feel that language is appropriate because LexisNexis isn't acting as a law enforcement agency; it's providing information to a bank. "We're not Homeland Security officers; we're public records aggregators." The transaction she described would be prohibited under this draft because LexisNexis isn't regulated by GLBA.

SENATOR THERRIAULT asked about paragraph (5) that says "if the request or collection is for a background check on the individual...".

[9:59:50 AM](#)

MS. ROBINSON explained that the employer collects the information but LexisNexis runs the background checks. Under the current draft employers could not give the social security number information they collected to LexisNexis to run a background check.

SENATOR THERRIAULT pointed out that it doesn't say that it has to be an employer that's requesting the information; it's just being requested by somebody for a background check. That somebody could be LexisNexis.

MS. ROBINSON said we don't have interactions with consumers and aren't requesting social security numbers; we're engaging in a transaction with another business.

CHAIR FRENCH said his analysis is that if you haven't requested the social security number then you could never get in trouble for having requested it. He suggested looking at Section .420 - sale, lease, loan, trade, or rental because that's what they do.

MS. ROBINSON said that's right, and the background check language isn't found in that section.

[10:01:39 AM](#)

CHAIR FRENCH asked her to supply language that would allow LexisNexis to do its business.

MS. ROBINSON said she believes the committee does have several amendments. Some are as simple as inserting an "or" in a sentence and changing the phrase "expressly authorized" to better reflect what the statute says. She reiterated that they're negative statutes so there are no express authorizations; there are permitted uses.

[10:02:36 AM](#)

REPRESENTATIVE COGHILL said he's willing to remove the word "expressly" from page 18, line 2, but not the word "authorized".

CHAIR FRENCH said unless you think their problem is created by the collection of social security numbers, we should be working on the next section.

REPRESENTATIVE COGHILL directed attention to the exceptions under the FCRA on page 19, and said there's tension between the authorized uses under GLBA and the allowed purposes under FCRA. And, LexisNexis isn't regulated by GLBA. Inserting the word "or" allows the "purpose" that the FCRA has and still allows the "authorized" language under GLBA. He tried to address that concern in paragraph (3) on page 19, but for those who are not regulated by either FCRA or GBLA, if the authorized language is removed for either collecting or distributing, there will be bad actors over which there will be light regulation. "I have no problem with these people being able to move in their commerce and if they have a breach, they have to report it. But there are people who don't have the regulation under these who can misuse that social security number, and should be regulated by this state law," he said.

[10:05:10 AM](#)

CHAIR FRENCH asked if LexisNexis is regulation by FCRA.

MS. ROBINSON said yes, but the issue is that some of its customers may not be. FCRA is specifically for credit reporting and consumer reporting bureaus, and LexisNexis is one. GLBA is specifically for financial institutions, and LexisNexis is not one. Customers include business and government, and government isn't necessarily a financial institution, but LexisNexis wants to be able to transact with them. The use of the information is regulated even if LexisNexis or its customers are not. Because the use is restricted and regulated, there is enforcement action in cases of misuse. That's the key issue. But as currently written LexisNexis can't transact business with people who aren't regulated by that statute.

CHAIR FRENCH asked if inserting an "or" on page 19, line 3, would solve the problem.

[10:06:46 AM](#)

MS. ROBINSON said if it were in both the GLBA and the FCRA exceptions, and in Sections .410, .420, and .430.

CHAIR FRENCH pointed out that Section .410 prohibits collection of social security numbers from an individual. If you don't do that, it doesn't affect your business, he said.

MS. ROBINSON agreed.

[10:07:46 AM](#)

CHAIR FRENCH clarified that she is saying that inserting "or" in both the GLBA and the FCRA exceptions would fix the problem.

MS. ROBINSON said it comes close to fixing our problem.

Turning to earlier testimony, she relayed that a number of states talk about financial theft or fraud rather than using the term "harm." She further explained that "or" is used on page 2, line 19, because sometimes it's appropriate not to have an investigation by law enforcement. For example, a billing irregularity that is flagged doesn't necessarily require law enforcement action if it's just a matter of reexamining the records. As the sponsor pointed out, most businesses will act in an appropriate manner given reputational harm and the financial consequences associated with non disclosure.

[10:10:11 AM](#)

SENATOR THERRIAULT highlighted that the word "investigation" is before the "or" so it's action the company does. Then it consults with the law enforcement agency to make sure that the work that was done and the finding is appropriate.

MS. ROBINSON responded that in certain cases consulting with the relevant law enforcement agency would delay the notification.

SENATOR THERRIAULT pointed out that subsection (c) doesn't say you shall not disclose. It says disclosure is not required if certain conditions are met. If you know there's been a breach and you decide to send out notices, you can do that regardless of what's in subsection (c).

[10:11:59 AM](#)

MS. ROBINSON questioned the necessity of consulting in that circumstance. If you've sent out a relevant disclosure, it makes the consultation mute, she said.

CHAIR FRENCH said you may not immediately know there's been a breach. In the time it takes to learn, should you be making a disclosure? He posed the example of unusual activity on his credit card.

MS. ROBINSON said that if you've made the appropriate investigation, disclosure may or may not be necessary, but she doesn't believe it should be required in all cases.

SENATOR THERRIAULT pointed out that unusual activity on your credit card is not a breach. A breach is when data is leaked.

[10:14:03 AM](#)

JON BURTON, Vice President, State Government Relations, ChoicePoint Inc., said his is a data and information company that services the financial industry. It don't offer the loans, products and financial tool that consumers use; it helps those who do facilitate the transactions.

The problems ChoicePoint has with the bill have been articulated in the previous committee. They relate to Sections .410, .420, and .430 and the exemption terminology of expressly authorized by local, state, or federal law and the GLBA and FCRA exemptions. While these exemptions recognize that commerce occurs every day, as drafted they don't work. They create problems for our company, which will create problems for our customers, who will in turn create problems for Alaska consumers.

All functions under the FCRA and the GLBA that allows for the permissible use of such data will either come to a halt or it will be severely restricted. Transactions that occur on the spot, such as on the spot credit for buying a car on the lot, and getting an insurance quote will either stop or will take days and weeks rather than minutes to complete. He urged the committee to adopt the suggested fixes that have been submitted.

[10:16:38 AM](#)

SENATOR WIELECHOWSKI asked if any other states have provisions similar to Sections .410, .420, or .430.

MR. BURTON replied absolutely not.

CHAIR FRENCH asked if ChoicePoint collects social security numbers.

MR. BURTON said no, but our customers do. Looking at the exemptions in Section .410, he said if our customers are trying to facilitate these transactions with us, my customers are not regulated by the FCRA. I am regulated by the FCRA and my purposes for facilitating this transaction is regulated by the FCRA. But my customers are not necessarily regulated by the FCRA so they would be unable to ask for a social security number to facilitate the transaction under the FCRA. The same thought process applies under the GLBA, and same applies under the expressly authorized language, as was articulated by Ms. Robinson from LexisNexis. To his knowledge there is no local state or federal statute that specifically expressly authorizes

the use of a social security number. What these statutes do is they speak to non-public personal information or personal information. Social security numbers are included in that kind of umbrella term.

10:18:36 AM

SENATOR WIELECHOWSKI asked for what purpose his customers ask for a social security number.

MR. BURTON explained that social security numbers are the most accurate method for ChoicePoint to insure that it is providing the right data about the right person to the right person.

SENATOR WIELECHOWSKI ask who the customers are and why they need social security numbers.

MR. BURTON said it could be a person who wants to get an insurance quote. Suppose your name is John Burton and the insurance agent sends that name through our system. We may return data on thousands of people, one or none of which may actually be you.

10:19:43 AM

SENATOR MCGUIRE asked about the possibility of using a driver's license number to avoid that confusion.

MR. BURTON said to his knowledge driver's license information isn't collected at the point of quote by an insurance agent. That is a unique data element that's regulated by the federal Driver's Privacy Protection Act and can have more restrictive purposes than the general purpose of facilitating a transaction to verify the identify a particular person by name, address and social security number.

10:21:18 AM

CHAIR FRENCH asked if insurance companies are covered by the FCRA.

MR. BURTON said no.

SENATOR WIELECHOWSKI asked why that wouldn't fall under page 18, lines 22-24, if the purpose is to verify the identity of an individual.

MR. BURTON replied he can't speak to whether that would apply to an insurance company or any other financial institution. His point is that ChoicePoint relies on the social security number

to facilitate providing and transferring data to facilitate some of these transactions.

CHAIR FRENCH asked if most of his concerns would be satisfied if the word "or" were added in four places to the GLBA and FCRA exceptions in Sections .420 and .430.

[10:22:43 AM](#)

MR. BURTON said it would address his operating concerns, but it would not address his customers' concerns in Section .410. And that doesn't address the issue with the "expressly authorized" phrase in all three sections.

CHAIR FRENCH pointed out that "expressly authorized" is just one exception and that's sufficient.

MR. BURTON responded that while he does conduct business pursuant to GLBA and FCRA, he also does business under the Driver's Privacy Protection Act, the U.S. Patriot Act, and the state equivalents. Then there's the legal consideration of whether a line item exemption trumps a general exemption. If he has prohibitions under one and allowances under another, he questioned which one controls.

[10:24:09 AM](#)

CHAIR FRENCH said you don't need all the exceptions, you need just one. His view is that no judge is going to allow you to get sued under a statute that exempts you from its coverage.

SENATOR MCGUIRE asked if he sees value in the legislation.

MR. BURTON replied without question he supports the policy of the bill, but as drafted it's fundamentally flawed.

[10:25:36 AM](#)

SENATOR WIELECHOWSKI said he's willing to help business and industry, but he isn't following the problem. In the instance of an insurance quote, the insurance company calls to verify the identity of the individual. Again, he questioned why that doesn't fall under page 18, lines 22-24.

CHAIR FRENCH said he believes that ChoicePoint's concern is on page 19, lines 5-8. If the transfer of the information is:

- (4) part of a report prepared by a consumer credit reporting agency in response to a request by a person and the person submits the social security number as

part of the request to the consumer credit reporting agency for the preparation of the report.

MR. BURTON said that is one permissible purpose as articulated under the FCRA, but that line doesn't encompass all permissible purposes, which is why it's critical to draft the FCRA exemption properly.

CHAIR FRENCH asked if it's acceptable as long as the transfer of that social security number is for a purpose authorized by the FCRA.

MR. BURTON replied that does help.

10:27:20 AM

SENATOR MCGUIRE asked if insurance companies in Alaska are following state law that prohibits the use of credit information as opposed to driving records to make rate quotes.

MR. BURTON replied that to his knowledge insurance companies are comporting themselves in accordance with state statutes.

KENTON BRINE, Northwest Regional Manager, Property Casualty Insurers Association of America (PCI), said that this trade association represents companies that underwrite about 50 percent of the home, auto, and commercial insurance that's written in the country. Member companies include Allstate, GEICO, Progressive, Liberty, American Family and several others that write business in Alaska.

MR. BRINE echoed the comments made by Mr. Burton. Many of our members are ChoicePoint customers and if they aren't able to provide the product and services to our companies, then our companies won't be able to provide cost-effective service to our consumers who are the policyholders of Alaska.

Responding to the question that Senator McGuire raised previously, he explained that Alaska statute allows insurers to consider a consumer's credit history for purposes of rating, but not for purposes of underwriting. Under the insurance code that criteria can be used for a period of two years on new business. After that time the customer is rated without using their credit information. With that in mind, he is seeking a change in language in Sec. 45.48.100 to define a credit report as a consumer report used for the purpose of determining loan eligibility during a security freeze. Currently 41 states have approved security freeze language similar to what is

contemplated in Alaska, and 34 of those have an allowance for insurers to access credit files that the consumer has frozen. We aren't accessing the information to determine eligibility for a loan, he said, and identity theft isn't a crime that's typically engaged in by a person seeking a better insurance rate. Generally people steal someone's identity to get money.

10:32:11 AM

MR. BRICE noted that a number of companies now provide access to rate quotes online so consumers can compare rates. The idea is that if the credit report is narrowly defined, for purposes of a freeze, and limited to lending only, then a person can do hassle-free shopping without worrying about identity theft and possible harm to their credit rating. He has provided specific language to amend Sec. 45.48.100 and Sec. 45.48.290.

CHAIR FRENCH relayed that he received the suggested language. He asked the sponsor if he or his staff had reviewed PCI's suggestions.

10:33:25 AM

Karen Lidster, Staff to Representative John Coghill, said we've looked at the request and feel that it opens too many loopholes, particularly in a freeze. She suggested the following language: "Any person or entity for use in setting or adjusting a rate, adjusting a claim or underwriting for insurance purposes." In response to the Chair, she said it pertains to Sec. 45.48.210 - Exemptions, on page 15.

MR. BRICE said he believes that language would work equally well.

10:35:40 AM

REPRESENTATIVE COGHILL said that is a broad exemption and up to now he's maintained that the individual should be in control of their consumer credit information. This removes some of that control. What will happen is that the insurers will be able to manipulate credit information for purposes of their business. From his perspective, the policy call is whether the consumer's credit is really frozen, or will the consumer need to be told in the express authorization that their credit is only frozen for the purposes of a loan, not for their credit information specifically.

10:37:20 AM

CHAIR FRENCH posed a hypothetical situation where he lost his wallet, made a decision to freeze his credit, and then made a

decision to get a new quote for auto insurance. He asked if he could authorize a specific insurance company to access his credit information for the purpose of that one quote.

REPRESENTATIVE COGHILL directed attention to the five exceptions on page 9, under subsection (g). The insurer could: 1) treat the application as incomplete, 2) decline the application, 3) treat the consumer as though they had a neutral credit rating, 4) exclude the use of credit information as a factor, or 5) treat the consumer in a manner that is otherwise approved by the division of insurance. Once a consumer freezes their credit, they become accountable for their creditworthiness. Once they've claimed the responsibility of locking down their credit, outside of lifting the credit freeze, they have to realize that there's a significant impact.

10:39:10 AM

CHAIR FRENCH observed that the upside is that all your credit is frozen, and the downside is that you may find your ability to operate in the financial world is curtailed.

REPRESENTATIVE COGHILL said he's always held that once an individual freezes their credit, they have the expectation that it is frozen. If this exception is opened, it says that a consumer's credit is only frozen for certain purposes. So insurers will be able to access that information to score the consumer's creditworthiness, not necessarily to deliver their insurance.

CHAIR FRENCH asked Mr. Brine why the consumer shouldn't be the one to make the choice.

MR. BRINE said this is mostly about the degree that the consumer faces expected or unexpected hassle. With 41 states that have security breach laws in place, the percentage of consumers using freezes is fairly small. In the 33 states where insurers are allowed access to frozen files, he's not aware of any complaints from consumers. The goal is to find a balance between protecting the consumer and allowing commerce to go forward. He understands the point of giving the consumer control and responsibility, but he believes that this is a relatively harmless change to make in terms of the risk involved.

10:42:05 AM

JENNIFER FLYNN, Director, Government Affairs, Consumer Data Industry Association (CDIA) said that CDIA represents consumer reporting agencies including LexisNexis and ChoicePoint; Ms.

Robinson and Mr. Burton outlined the issues very clearly. CDIA has been working with the sponsor and others for about 18 months to make positive changes to the bill. She supports the policy and the intent, but she opposes the technical drafting. Contrary to what some have claimed, industry doesn't want a weaker bill. It wants a bill that it can comply with and that provides protection to Alaska consumers as well as the services they have come to rely on.

MS. FLYNN said that as an industry CDIA knows that the social security number is important and private, and it takes great pains to keep that information secure; it's only used for specific purposes allowed for under FCRA and GLBA. Their attorneys have said that Article 3 will create serious repercussions for the current products and services that CDIA provides. It's helpful that legislators say that credit reporting agencies should be able to comply, but if our companies say they can't comply with the language then they won't be able to continue to do credit reports and consumer reports the way they're currently done, she said. That might mean that certain services and products will be stopped or that it'll take weeks to verify identities instead of hours. No other state has this type of requirement drafted this way so we really don't know, she said.

MS. FLYNN suggested that the addition of the word "or" in Sections .410, .420, and .430 would go a long way to alleviating her concerns. The amendments that CDIA submitted regarding "expressly authorized" and that the FCRA and GLBA requirements are not arbitrary are necessary. Regardless of any other interpretation, that's the way our companies interpret this, she said.

[10:46:27 AM](#)

MARIE DARLIN, Coordinator, AARP-Alaska, said she submitted a letter that contains some statistical information. AARP-Alaska supports the bill as one of the most comprehensive in the nation. The legislature should protect citizens from the unauthorized dissemination of information, she said. Hopefully the problems will be resolved and this will become law this session.

SENATOR THERRIAULT commented that AARP wants to tell members they have the opportunity to avail themselves of the law and get protection and the legislature wants to make sure that the protection is real.

10:49:26 AM

SENATOR THERRIAULT asked if Ed Sniffen or Gail Hillebrand could comment or provide cautions on the suggestions.

MS. HILLEBRAND said the conundrum is that the people that are testifying are restricted in various ways by federal law, but the proposed "or" language would open sections to the bill for people whose product is not regulated by federal law. The "ors" that have been proposed would have the result of saying that these persons are regulated by the FCRA, but that isn't designed to be a social security number statute. Every business that reports to a credit reporting agency in the U.S. is a person regulated by the FCRA with respect to that conduct. So if there's a general "or" after "a person regulated by the FCRA" you're saying just about every decent size retailer would be exempt from things like whether they can sell your social security number.

Likewise, if you say every purpose under the FCRA without tying it to a person regulated by FCRA, you include the general casual person that otherwise has a legitimate business need for the information in connection with the business transaction initiated by the consumer. That would be very broad so it's a policy question not simply a technical drafting question.

With GLBA, it does regulate financial institutions at least as they're defined broadly. But the exceptions in GLBA include an exception for consent or direction of the consumer. CU is deeply concerned that adding an "or" in the GLBA section would essentially say that anytime the paperwork says it's okay, the protections of the Alaska law would go away. That would be an unfortunate result, she said.

MS. HILLEBRAND suggested that in the states where the term "harm" has been defined under notice of breach, the definition has done more harm than good because things other than identity theft can be a form of harm from a breach. Domestic abuse situations and stalking are examples where a small bit of a person's information is looked at, but there may be potential for physical violence. Also, there are non financial harms from identity theft that a definition might overlook.

10:52:35 AM

SENATOR WIELECHOWSKI asked if she has any suggestions about the concerns ChoicePoint voiced about its ability to provide verification information on insurance quote requests relative to Sections .410, .420, and .430.

MS. HILLEBRAND said that CU will continue to work with the sponsor and the industry, but just saying the purpose or the person is too broad.

[10:54:29 AM](#)

MR. SNIFFEN agreed with Ms. Hillebrand about potentially opening up the exemption. Federal law is very broad and allows a lot of social security number uses that this bill wants to restrict. The purpose for this bill is to curtail conduct that exists in the marketplace to protect consumers from identify theft.

With respect to the concern about the "expressly authorized" language, he suggested changing it to say that the information is allowed by state or federal law. Then none of it matters because the GLBA, the FCRA, the Driver's Privacy Protection Act, and the U.S. Patriot Act would all allow the uses that industry wants. He doesn't read "expressly authorized" as narrowly as they do. His view is that if you are expressly authorized by federal law to do something with a social security number, then you can do that. If GLBA or FCRA says you can use someone's social security number when issuing a report, that suggests it is expressly authorized. There may be legal quibbling over whether that's express authorization as opposed to permitted use, but he hasn't seen case law that interprets it that way. He understands how the attorneys for ChoicePoint and LexisNexis are looking at it, but the intent of those statutes is clear that the people who are regulated by those Acts be allowed to use the information. The sponsor has suggested that removing just the word "expressly" may fix the problem. "We are willing to work with the sponsors and the industry and others...to try and find a way to fix this."

[10:57:38 AM](#)

MR. SNIFFEN disagreed with Ms. Robinson's assessment of the issue on page 2 about self policing or consulting with federal, state, or local law enforcement agencies. In his view if you feel that a disclosure is necessary, then you disclose and there's no consultation required. Changing the language to "and" still would require you to consult with local officials if disclosure was necessary. The only time you'd need to consult, if Senator Therriault's suggestions are adopted, is if you thought about not disclosing. The requirement to disclose would always be there and you'd have to do it if there was a breach. Consultation would only be necessary in the instance where you thought disclosure would not be required.

SENATOR THERRIAULT observed that many of the terms used in subsection (c), on page 2, would need to be defined. He asked if the words: appropriate investigation, consultation, and reasonable likelihood should be fleshed out in regulation or in the definition section.

MR. SNIFFEN agreed with Ms. Hillebrand that trying to define things too much creates problems. The intent is clear and the language is probably okay as is, he said.

SENATOR THERRIAULT questioned whether subsection (c) should include some statement of time.

[11:00:42 AM](#)

MR. SNIFFEN replied DOL would interpret this to mean a reasonable time under all circumstances because time is of the essence when there's been a breach. If a business didn't act quickly and there was potential for harm, that would expose them to penalties and liabilities. It might not be a bad idea to set a timeframe, but he isn't sure what it would be.

REPRESENTATIVE COGHILL noted that in subsection (b) it says "in the most expeditious time possible" and questioned if that would also apply to subsection (c).

[11:01:48 AM](#)

MR. SNIFFEN said those are separate sections and it might not be a bad idea to put it in subsection (c).

REPRESENTATIVE COGHILL supported including some expeditious language, perhaps by noticing subsection (b) in subsection (c).

SENATOR THERRIAULT said that or a restatement, whichever the drafter suggests is appropriate.

CHAIR FRENCH saw no harm in having an expeditious investigation.

SENATOR THERRIAULT referred to the phrase "consultation with relevant federal, state, or local agencies" and questioned whether that provides sufficient direction.

CHAIR FRENCH said the word "relevant" seems adequate.

[11:02:54 AM](#)

MR. SNIFFEN said it would depend on the circumstance of the breach. If it was a breach that was limited to Alaska, it would probably be someone at the state, local or municipal level, but

he doesn't know if the Municipality of Anchorage has a consumer protection function so it would fall to DOL. If it was a national breach that happened to include information on Alaska residents, then the consultation might be with federal officials in charge of bad acts on a national level or the official where the breach occurred. The term "relevant" gives the flexibility for a company to decide who is the most appropriate law enforcement official to go to.

[11:04:04 AM](#)

REPRESENTATIVE COGHILL emphasized that this is important legislation for Alaska. The tension between allowing consumers to protect themselves while allowing companies to work with this information and do commerce can be clearly seen in the section on social security numbers. This is relevant to industry and it should be to Alaska consumers because their identity really does travel in a little number. He offered to continue working with the industry and the committee to solve any problem areas.

CHAIR FRENCH held HB 65 in committee.

There being no further business to come before the committee, Chair French adjourned the meeting at [11:05:24 AM](#).